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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JULIAN PACHON, MARC ANDERSON, and DAVID STAHELI

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Appeal 2016-006459  
Application 11/961,579  
Technology Center 3600

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Before BRADLEY W. BAUMEISTER, BETH Z. SHAW, and  
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1, 3, 4, 6, 7, and 21–35, which represent all the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' invention is directed to scheduling a resource for a scheduled airline flight. Spec. ¶ 6.

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<sup>1</sup> Throughout this Decision we have considered the Appeal Brief filed September 16, 2015 ("Br."), the Examiner's Answer mailed April 7, 2016 ("Ans."), and the Final Rejection mailed March 25, 2015 ("Final Act.").

Claim 1 is illustrative of the claims at issue and is reproduced below:

1. A computer-implemented method comprising:
  - receiving, from a client device associated with a visual display device, a notification of a user selection of a visual representation of a flight pairing presented by the visual display device that identifies a flight or a series of flights for which a flight crew resource or aircraft resource is to be scheduled or changed;
  - in response to receiving the notification of the user selection of the visual representation of the flight pairing, filtering, by one or more processors, data files for flight crew resources or aircraft resources to identify candidate resources that based on availability criteria, authorization criteria, qualification criteria, or training criteria, are appropriate to be scheduled for or changed to the selected flight pairing;
  - providing, to the client device, information related to the identified candidate resources, wherein the information is used by the client device for presenting by the visual display device and for each of the identified candidate resources, a corresponding visual representation of the candidate resource;
  - receiving, from the client device associated with the visual display device, a notification of a user input that associates the visual representation of the selected flight pairing with the visual representation of a selected candidate resource;
  - in response to receiving the notification of the user input that associates the visual representation of the selected flight pairing with the visual representation of the selected candidate resource, determining, by one or more processors, that a pairing assignment of the selected flight pairing with the selected candidate resource violates one or more predefined rules, and providing information related to the determined violation of one or more predefined rules to the client device, wherein the information is used by the client device for displaying, by the visual display device, one or more visual indicators of rule violations in association with the visual representation of the selected candidate resource or the visual representation of the flight pairing; and
  - updating, by one or more processors, a resource schedule to indicate that the selected candidate resource is scheduled for or changed to the flight pairing.

## REJECTION

The Examiner rejected claims 1, 3, 4, 6, 7, and 21–35 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 2–6.

## ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Appellants do not proffer sufficient argument or evidence for us to find error in the Examiner’s findings. For at least the reasons discussed below, we agree with and adopt the Examiner’s findings and conclusions in the Final Action and Answer.

The Examiner finds the pending claims are directed to an abstract idea of a fundamental economic practice of planning and conducting airline operations. Final Act. 4. The Examiner also finds additional elements recited in these claims do not amount to significantly more than the abstract idea itself. *Id.* at 4–5; Ans. 5–8. According to the Examiner, the claims require no more than implementing the abstract idea on a computer. *Id.* at 5.

Appellants present several arguments against the 35 U.S.C. § 101 rejection. Br. 13–16. Appellants contend the claims are not directed to an abstract idea (Br. 13–15) and that the claims amount to significantly more than an abstract idea. *Id.* at 15–16.

Appellants’ arguments are unpersuasive. Instead, we find the Examiner has provided a comprehensive response to Appellants’ arguments supported by a preponderance of evidence. Ans. 3–9; *see also* Final Act. 2–6. As such, we agree with and adopt the Examiner’s findings and explanations provided therein. *Id.*

The Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). The “‘abstract ideas’ category embodies ‘the longstanding rule that ‘[a]n idea of itself, is not patentable.’” *Alice*, 134 S. Ct. at 2355 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–78 (2012)). The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.*

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 77–80). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’”

*Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation omitted).

After undertaking the first step of the *Alice* inquiry, we agree that Appellants’ claims are directed to an abstract idea, as explained by the Examiner. Final Act. 2–6. All the steps recited in Appellants’ claims are abstract processes of receiving, filtering, providing, and updating data. *Cf. Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“collecting information, analyzing it, and displaying certain results of the collection and analysis” is abstract); *In re Salwan*, Appeal No. 2016-2079, 2017 WL 957239 at \*3 (Fed. Cir. Mar. 13, 2017) (affirming the rejection under § 101 of claims directed to “storing, communicating, transferring, and reporting patient health information,” noting that “while these concepts may be directed to practical concepts, they are fundamental economic and conventional business practices”); *Cyberfone Systems, LLC v. CNN Interactive Grp, Inc.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (nonprecedential) (“using categories to organize, store, and transmit information is well-established”).

The second step of the *Alice* inquiry indicates that the limitations in Appellants’ claims do not add anything “significantly more” to transform into a patent-eligible application the abstract concept of planning and conducting airline operations. Final Act. 4–6; Ans. 5–8; *see also Alice*, 134 S. Ct. at 2357. We agree with the Examiner that the computer limitations of claim 1 are not “significantly more” than the abstract idea. Ans. 7. These limitations merely constitute ordinary steps in data analysis and are recited in an ordinary order. Limiting an abstract concept of receiving and updating data to a general purpose computer having generic components, such as the “client device” or “processors,” as recited in Appellants’ claims, does not

make the abstract concept patent-eligible under 35 U.S.C. § 101.

As recognized by the Supreme Court, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358; *see id.* at 2359 (concluding claims “simply instruct[ing] the practitioner to implement the abstract idea of intermediated settlement on a generic computer” are not patent eligible); *see also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (claims reciting “generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event] on a computer” are not patent eligible); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (“[s]imply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render [a] claim patent eligible” (internal citation omitted)).

Appellants argue the claims “address a challenge that is particular to commercial aviation, and necessarily rooted in computing and display technology necessary to overcome the challenge.” Br. 15. This argument overlooks that our reviewing court cautioned against Appellants’ position in its *DDR Holdings* decision.

We caution, however, that not all claims purporting to address Internet-centric challenges are eligible for patent. For example, in our recently-decided *Ultramercial* opinion, the patentee argued that its claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” 772 F.3d at 714. But this alone could not render its claims patent-eligible. In particular, we found the claims to merely recite the abstract idea of “offering media content in exchange for viewing an

advertisement,” along with “routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.” *Id.* at 715–716.

*DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (2014). The claimed invention in *DDR Holdings* did not merely use the Internet, but, rather, changed how interactions on the Internet operated. Appellants’ claims are not rooted in computer technology, as outlined in *DDR Holdings*.

With regard to Appellants’ argument that the pending claims are patent eligible because there are no pending obviousness or novelty rejections of the claims, (*see* Br. 15–16), Appellants improperly conflate the requirements for eligible subject matter (§ 101) with the independent requirements of novelty (§ 102) and non-obviousness (§ 103). “The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (stating that, “under the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility”).

Because Appellants’ claims 1, 3, 4, 6, 7, and 21–35 are directed to a patent-ineligible abstract concept and do not recite something “significantly more” under the second prong of the *Alice* analysis, we sustain the Examiner’s rejection of these claims under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice* and its progeny.



DECISION

The decision of the Examiner to reject claims 1, 3, 4, 6, 7, and 21–35 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED